

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
HELENA DIVISION

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KORI LANE LAKE,

Cause No. CV-07-072-H-DWM-RKS

Plaintiff,

vs.

MIKE MAHONEY,

Defendant.

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FINDINGS AND RECOMMENDATION  
OF UNITED STATES MAGISTRATE  
JUDGE

This matter originated with Plaintiff filing a Complaint pursuant to 42 U.S.C. § 1983 on November 18, 2007. (Document 2). Plaintiff is a pro se prisoner litigant who was granted permission to proceed in forma pauperis on December 03, 2007. (Document 1). Plaintiff filed an Amended Complaint (Document 12) on December 10, 2007. Plaintiff is currently incarcerated at Montana State Prison in Deer Lodge, Montana. The Court has jurisdiction pursuant to 28 U.S.C. § 1331.

Plaintiff has filed a Motion for Preliminary Injunction (Document 13) for an order discontinuing the Behavior Management Plan (BMP) imposed upon him after he made remarks to an officer that he desired to kill a prison psychiatrist. Under the BMP, inmates are placed in restrictive living conditions for a four day period with those conditions gradually improving on the third and fourth days. MSP Behavior Management Plan (BMP) Form, attached as Exhibit 1 to Plaintiff's Complaint. The MBP is effective for six months during which time an inmate is

subject to being placed in the same restrictive conditions if he should engage in “any physical or verbal conduct that is assaultive, disruptive, or inappropriate.” Id.

The factors a court must consider when determining whether to grant a preliminary injunction include 1) the significance of the threat of irreparable harm to plaintiff if the injunction is not granted; 2) the state of the balance between this harm and the injury that granting the injunction would inflict on defendant; 3) the probability that the plaintiff will succeed on the merits; and 4) the public interest. Stanley v. University of Southern California, 13 F.3d 1313 (9th Cir. 1994).

Plaintiff has not demonstrated that his continued placement into the BMP will cause him to suffer irreparable injury, nor has he demonstrated that his claim that his placement into the program is violative of his First and Fourteenth Amendment rights likely to succeed on the merits. See Sandin v. Conner, 515 U.S. 472, 482, 485, 115 S.Ct. 2293, 2301, 132 L.Ed.2d 418 (1995); Schroeder v. McDonald, 55 F.3d 454, 462 (9th Cir. 1195)

Accordingly, the Court enters the following:

#### **RECOMMENDATION**

That Plaintiff's Motion to for Preliminary Injunction (Document 13) be **DENIED**.

#### **NOTICE OF RIGHT TO OBJECT TO FINDINGS & RECOMMENDATION AND CONSEQUENCES OF FAILURE TO OBJECT**

Pursuant to 28 U.S.C. § 636(b)(1), the parties may serve and file written objections to this Findings and Recommendations within ten (10) business days of the date entered as indicated on the Notice of Electronic Filing. A district judge will make a de novo determination of those portions of the Findings and Recommendations to which objection is made. The district judge

may accept, reject, or modify, in whole or in part, the Findings and Recommendations. Failure to timely file written objections may bar a de novo determination by the district judge.

**PLAINTIFF IS CAUTIONED THAT HE MUST KEEP THE COURT ADVISED  
OF ANY CHANGE OF ADDRESS AND A FAILURE TO DO SO COULD RESULT THE  
DISMISSAL OF THIS CAUSE OF ACTION WITHOUT FURTHER NOTICE TO HIM.**

DATED this 4th day of April, 2008.

/s/ Keith Strong  
Keith Strong  
United States Magistrate Judge